CORPS' WATER SUPPLY AUTHORITIES

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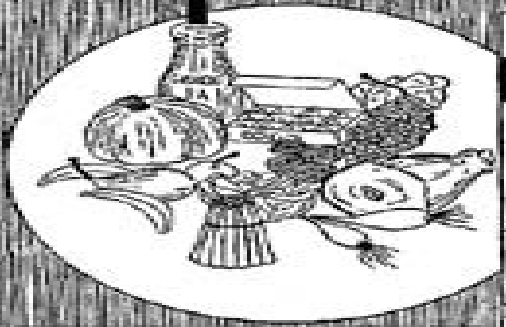
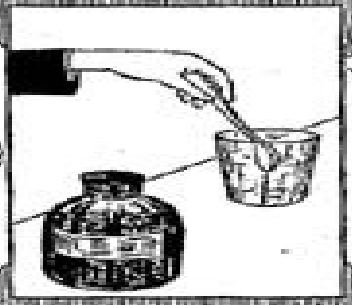
Outline

1. **Introduction**
2. **Contributed Funds authority (33 USC 701h)**
3. **Independent Offices Appropriation Act**
4. **Surplus Water -- Sec.6, 1944 Flood Control Act**
5. **Water Storage ---1958 Water Supply Act**
6. **Eligible Users**
7. **Rights acquired by User**
8. **Reduced pricing for certain water**

Importance & USES OF Water

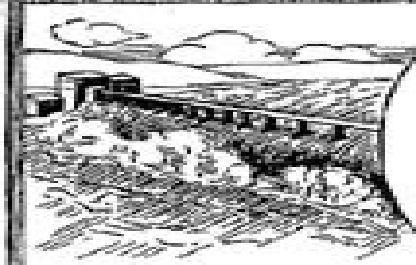


FOODS CONTAIN AS HIGH AS 90% WATER

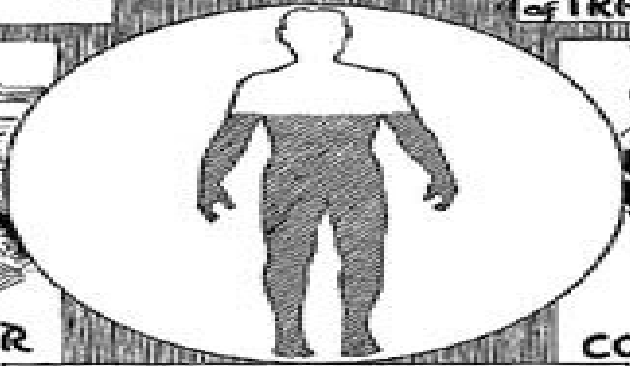


MOST IMPORTANT SOLVENT

COVERS ¾ of the EARTH'S SURFACE - A MEDIUM of TRANSPORTATION



WATER POWER



HUMAN BODY IS 70% WATER

DRINKING

WASHING

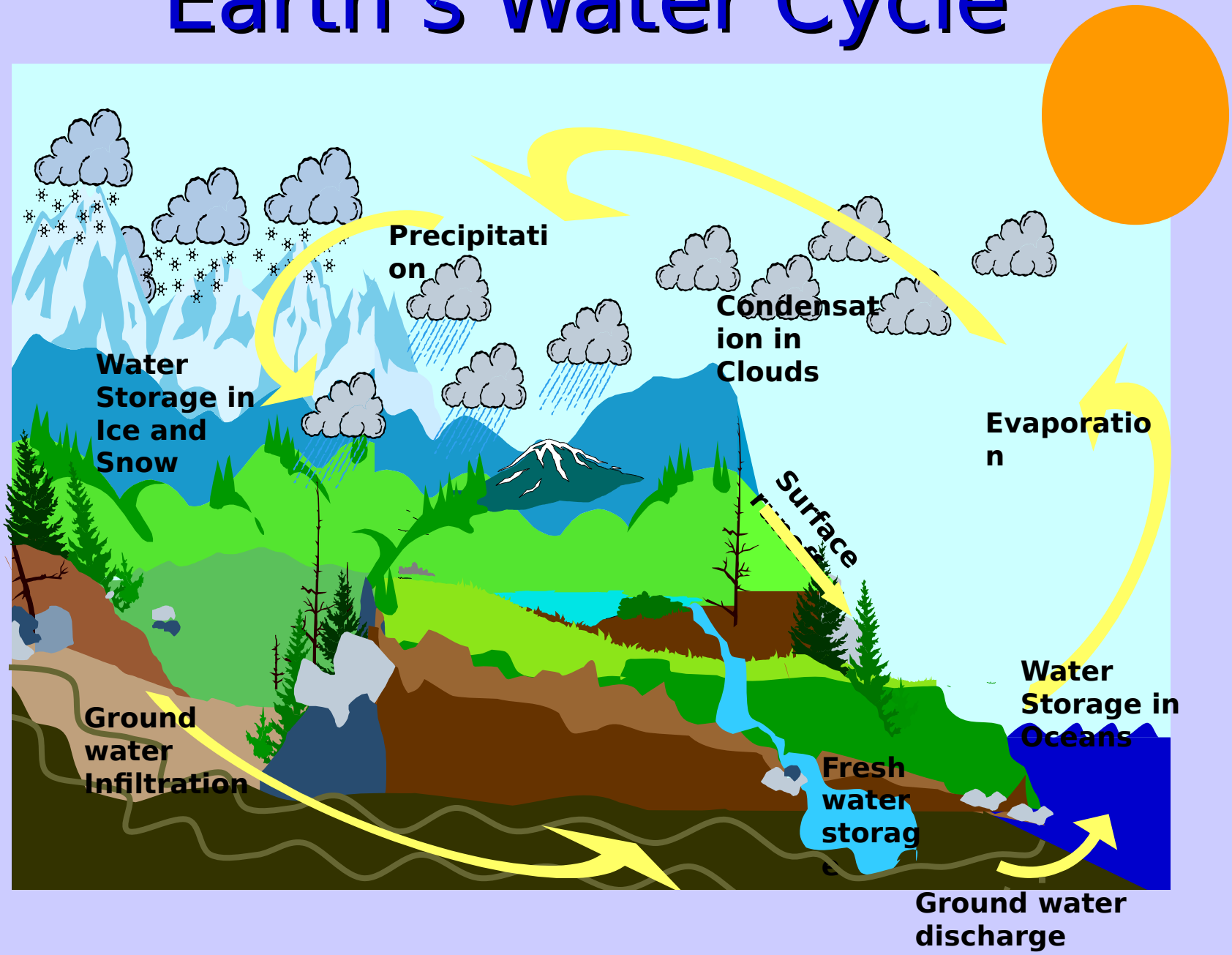
COOKING

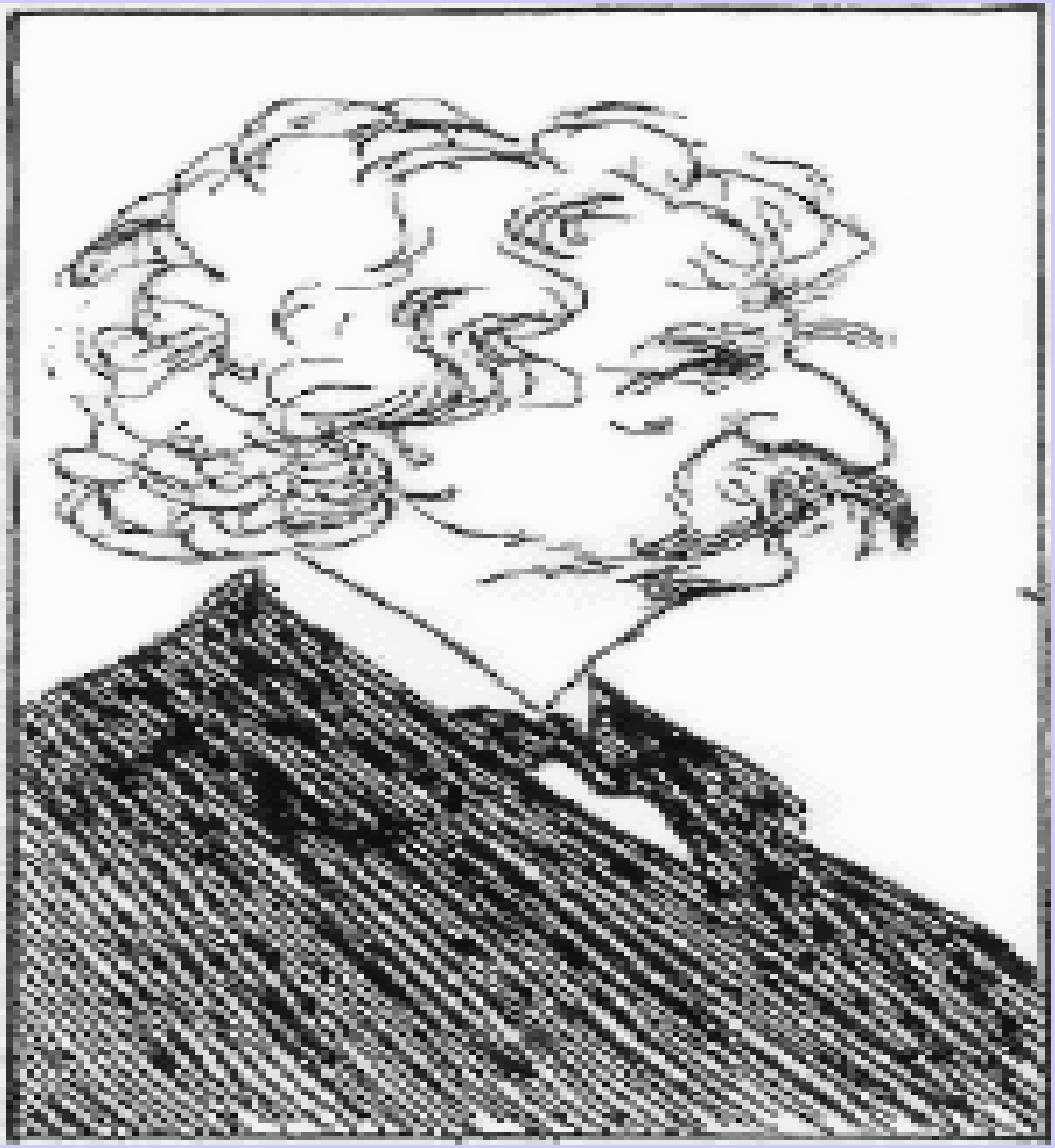
NO WATER

PLENTY of WATER

ESSENTIAL TO SOIL FERTILITY

Earth's Water Cycle





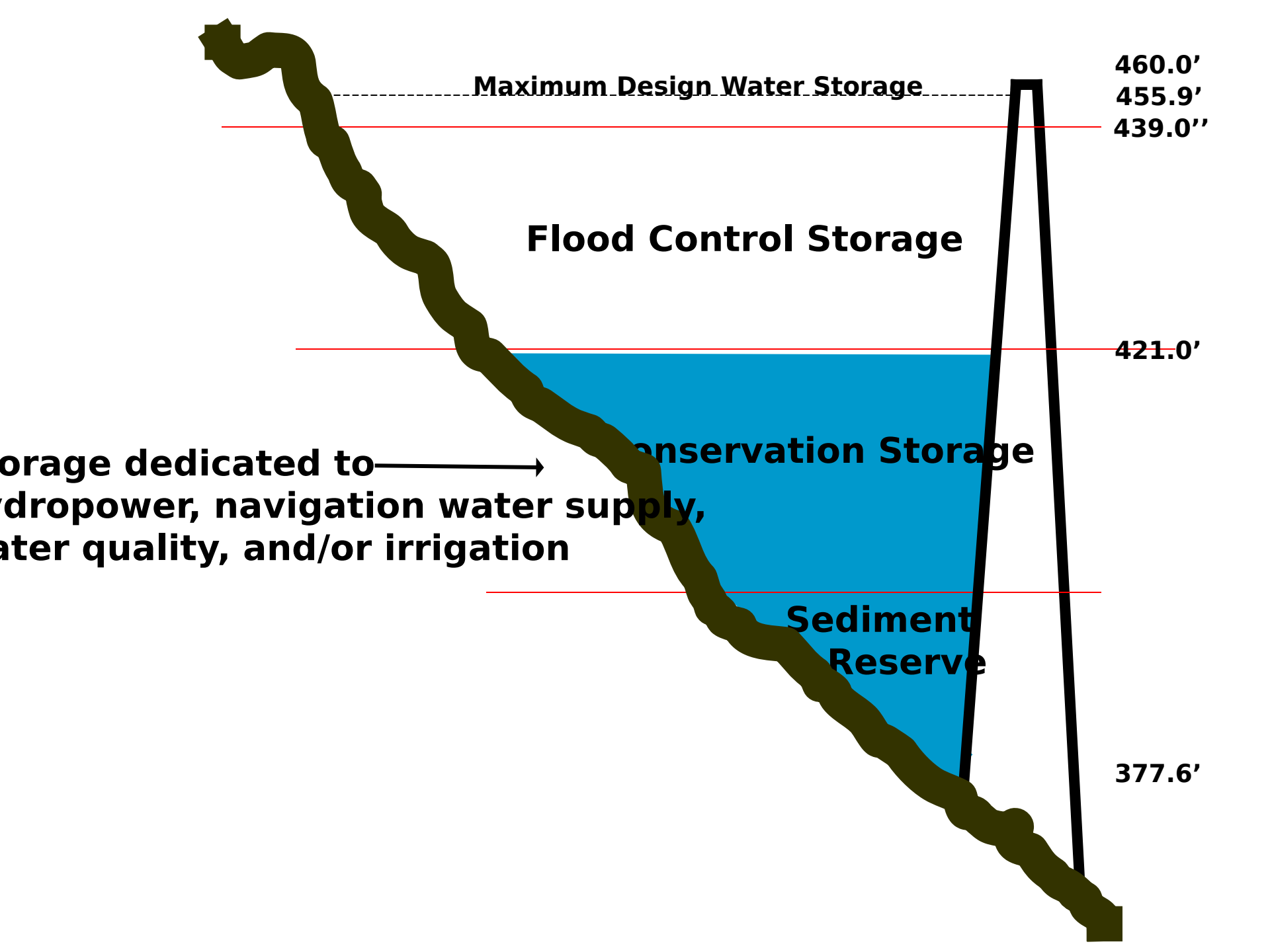
Whiskey's for drinkin':

water's for fightin'

--Mark Twain

Reservoir:

Dam and Reservoir or Lock and Dam for which water control management is routinely required to control water level


Maximum Design Water Storage
460.0’
455.9’
439.0’’
Flood Control Storage
421.0’
orage dedicated to
ydropower, navigation water supply,
ater quality, and/or irrigation
nservation Storage
Sediment
Reserve
377.6’

“NO FREE LUNCH”

No general authority for “free” water at Corps projects, unless a basis for the right can be made which predates Corps project.

Corps Water Supply AUTHORITIES

- Project specific authorities
- War Department Civil Appropriations Act of 1938-- Contributions by Locals (33 USC 701h)
- Independent Offices Appropriations Act, 31 USC 9701, use discontinued
- 1944 Flood Control Act, Section 6 & 8
- 1958 Water Supply Act
- Emergency Authority, PL 84-99, as amended

Contributions by Locals

…the plans for any reservoir project may be modified to provide additional storage capacity for domestic water supply on condition that the costs for such storage capacity is contributed by the locals….

33 USC 701h

Limited use because reluctance for locals to pay large sums when the water was not a current need --

1. 100% of the funding required before construction commenced.

2. Lack of need expressed so

Independent Offices Appropriations Act Authority

The head of each agency may prescribe regulations establishing the charge for a service or thing of value provided by the agency…. Each charge shall be fair and based on the costs to the Government, the value of the service or thing provided, public policy or interest served, and other relevant facts.

31 USC 9701

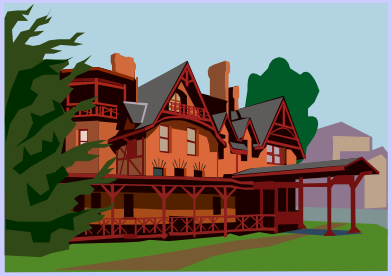
- **Secretary of Army discretion to charge**
- **Charge based on cost to the government**
- **Use discontinued wrt water**

SECTION 6
1944 Flood Control Act

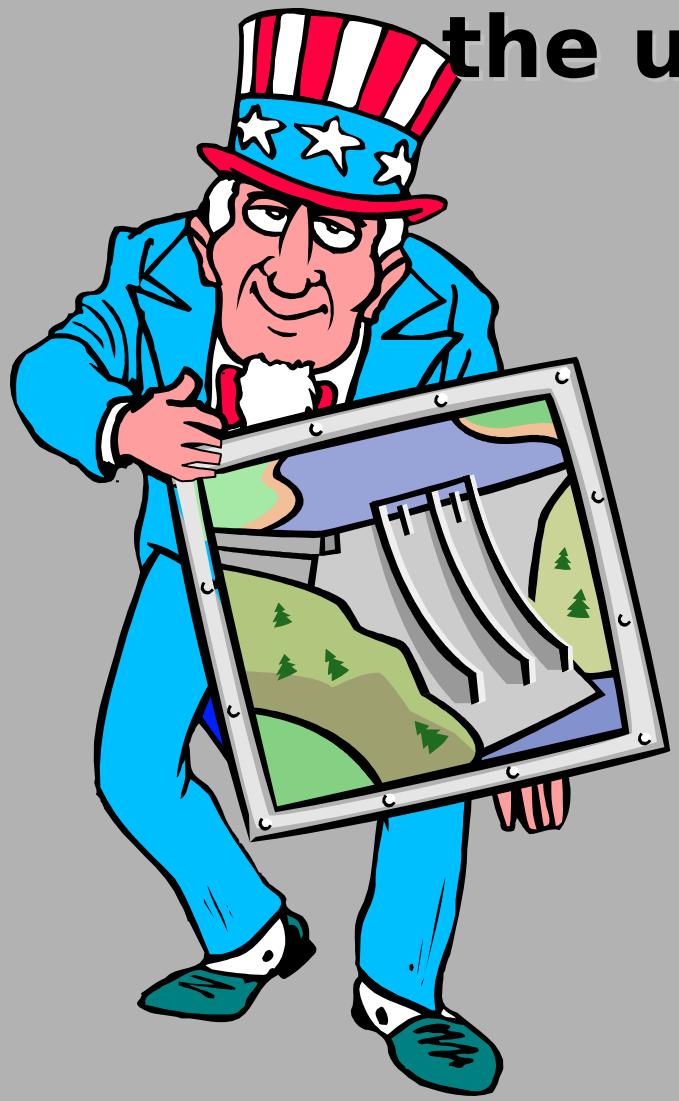
"[T]he Secretary of War is authorized to make contracts with States, municipalities, private concerns, or individuals, at such prices and on such terms as he may deem reasonable, for domestic and industrial uses for surplus water that may be available at any reservoir under the control of the War Department: *Provided,* That no contracts for such water shall adversely affect then existing lawful uses of such water. All moneys received from such contracts shall be deposited in the Treasury of the United States as miscellaneous receipts."

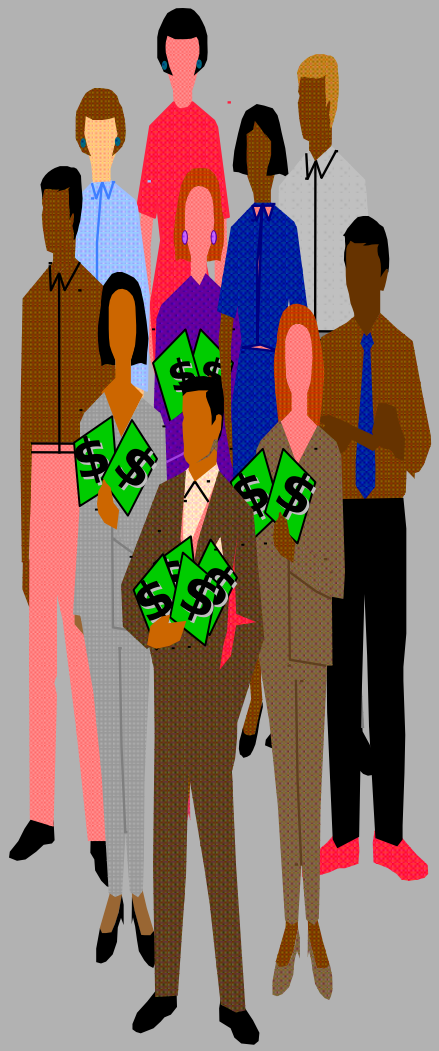
Municipal and Industrial Uses

Crop Irrigation

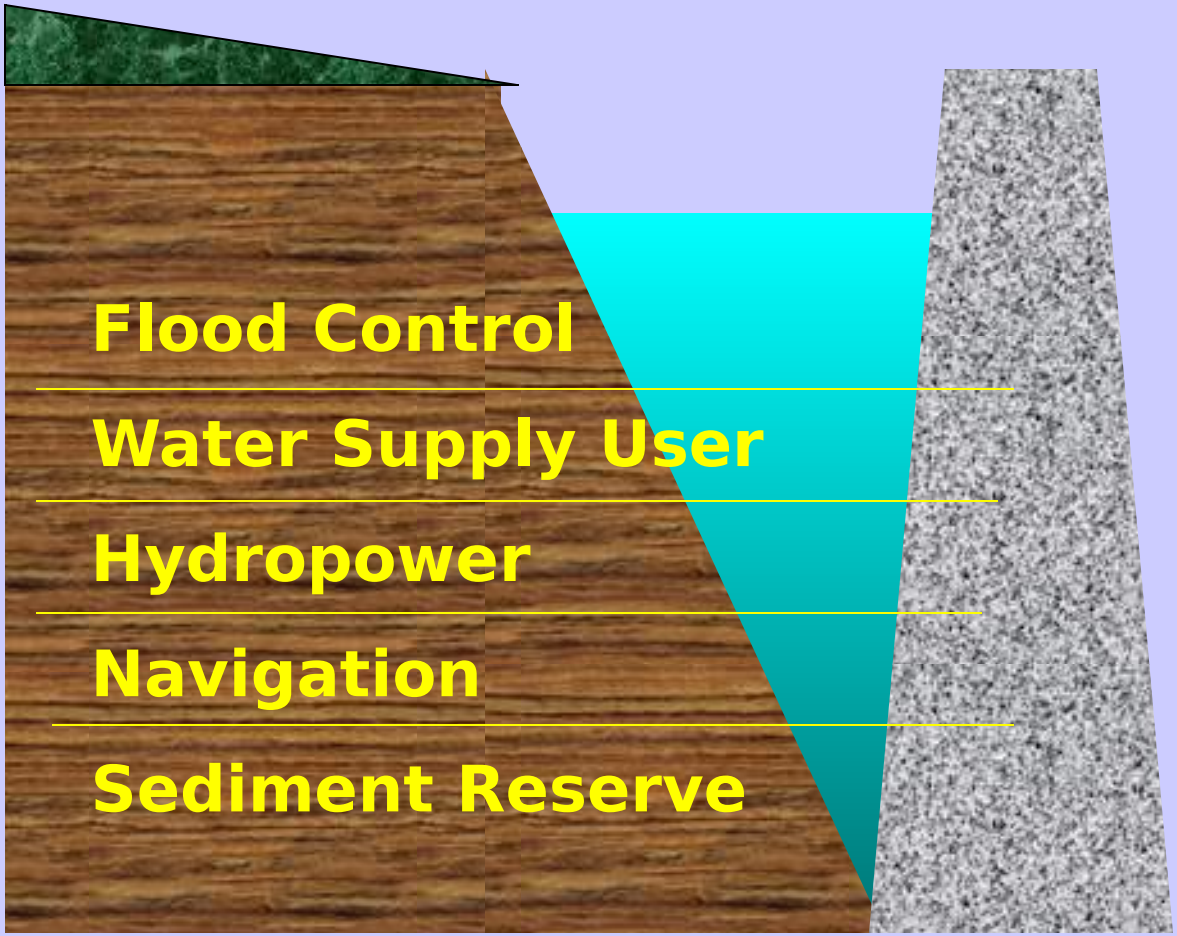


The financial burden of attaining surplus water rests with the user





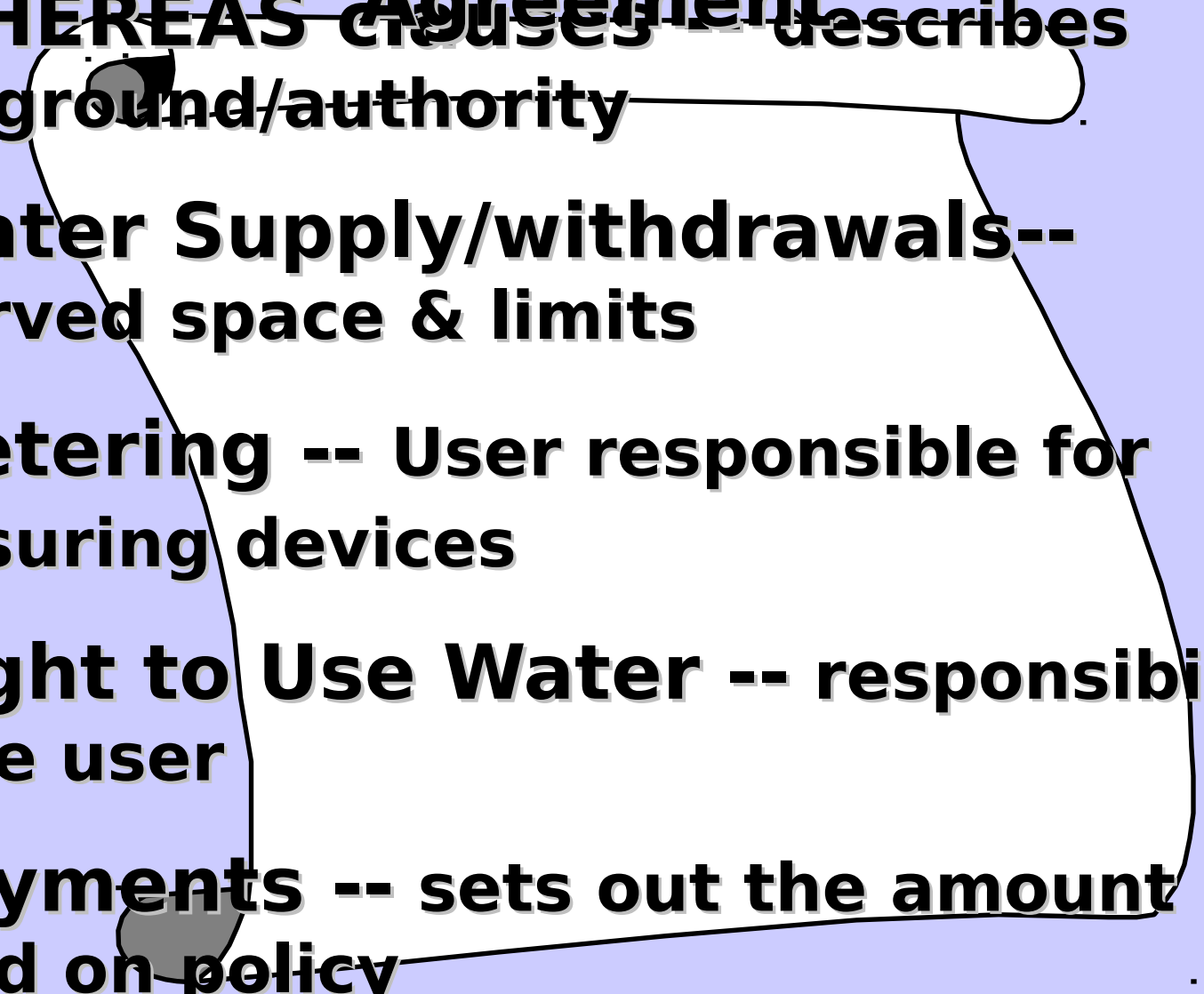
What is “surplus” water?



"[T]he Secretary . . . Has the discretion to market water . . .even if this results in a decrease of the project's actual or potential power production. . .Section 6 was included in the Flood Control Act to empower the Secretary of the Army to make reasonable reallocations between the different project purposes."

Army General Counsel, 13 March 1986

Provisions of the Surplus Water Agreement



- **WHEREAS clauses -- describes background/authority**
- **Water Supply/withdrawals-- reserved space & limits**
- **Metering -- User responsible for measuring devices**
- **Right to Use Water -- responsibility of the user**
- **Payments -- sets out the amount based on policy**
- **Duration -- not to exceed 5 years**

Water Supply Act of 1958

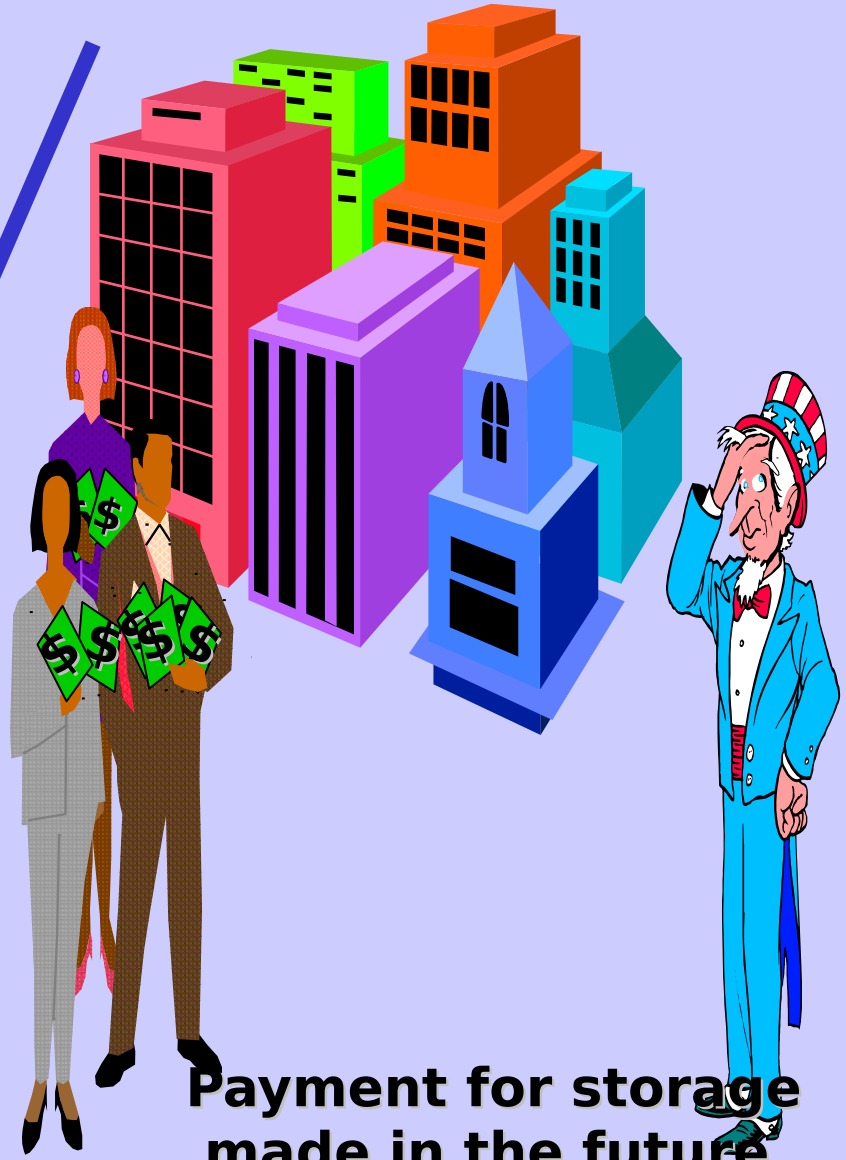
"[S]torage may be included in any reservoir project surveyed, planned, constructed or to be planned, surveyed and/or constructed by the Corps of Engineers . . . to impound water for present or anticipated future demand or need for municipal or industrial water, . . .; *Provided . . .*, That before construction or modification of any project including water supply provisions for present demand is initiated, State or local interests shall agree to pay for the cost of such provisions in accordance with the provisions of this section[.]"

Water Supply Act of 1958, Continued

(d) Modifications of a reservoir project heretofore authorized, surveyed, planned, or constructed to include storage as provided in subsection (b), which would seriously affect the purposes for which the project was authorized, surveyed, planned, or constructed, or which would involve major structural or operational changes, shall be made only upon the approval of Congress as now provided by law.

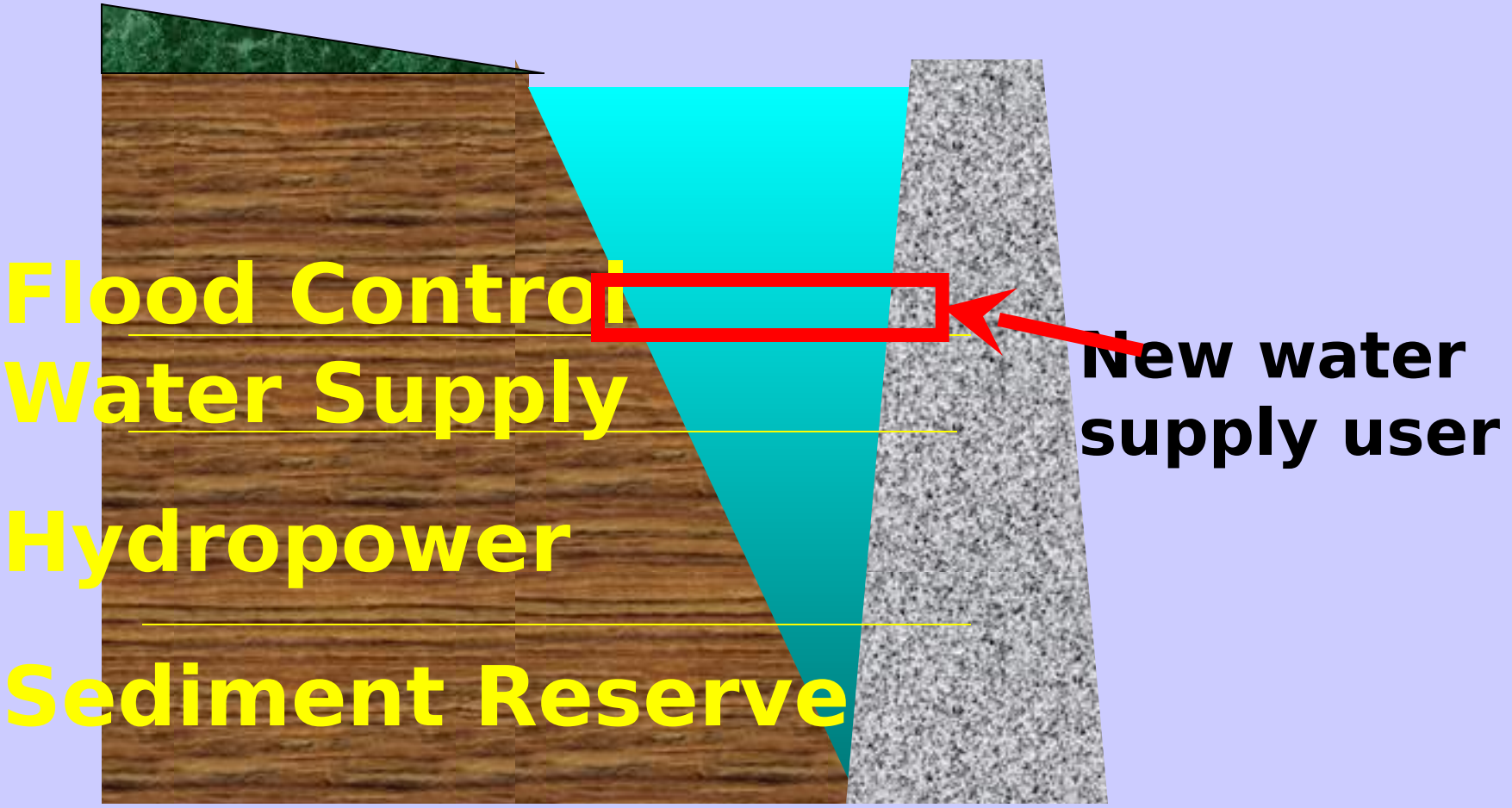
Future Use Storage

Present Day
Storage allocation

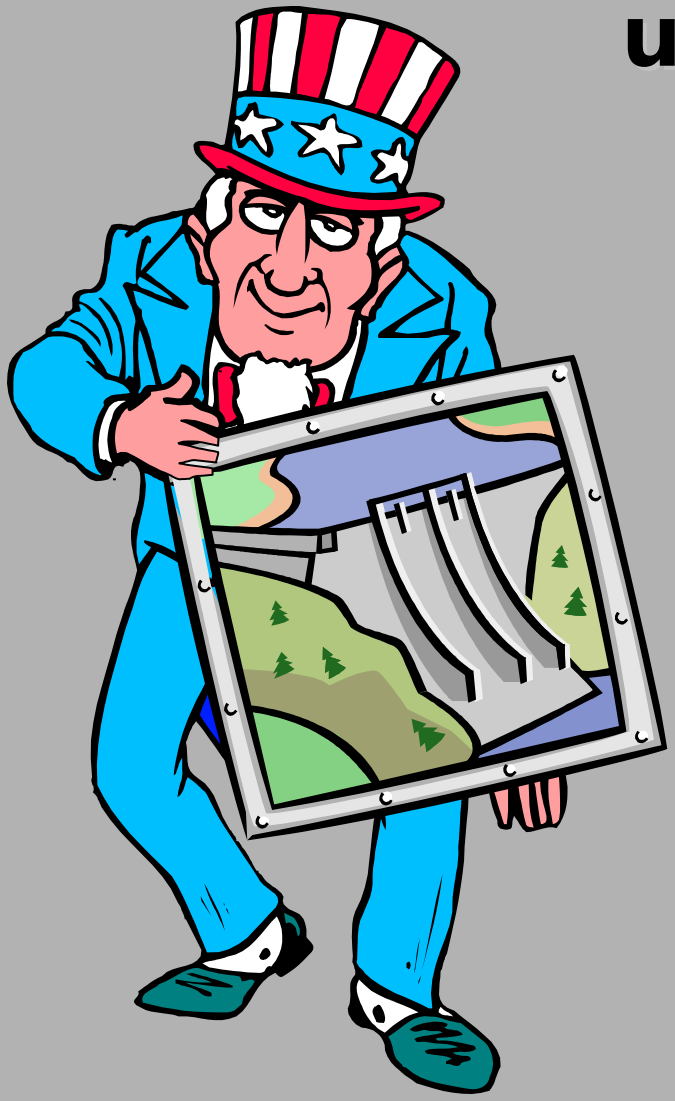


Payment for storage
made in the future

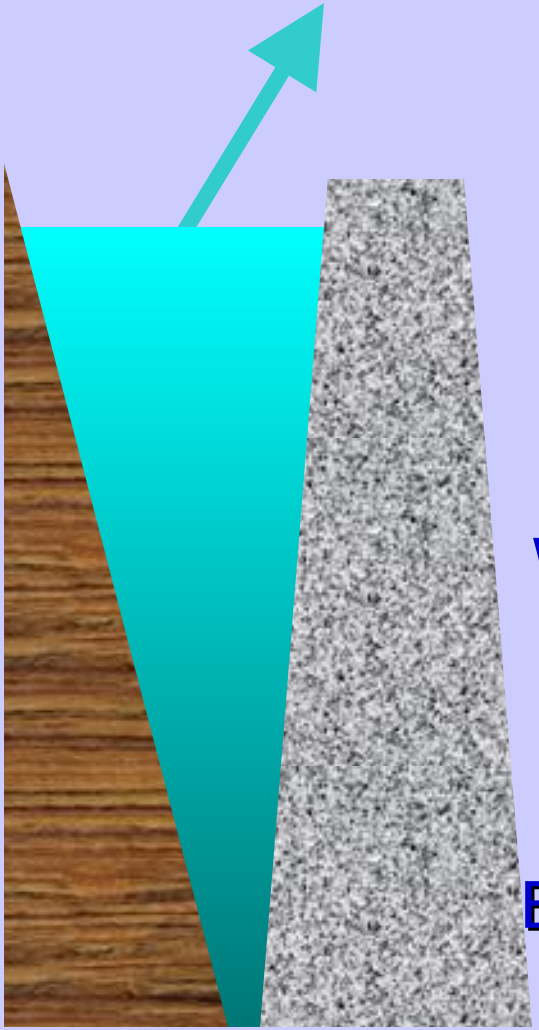
Reallocation of Reservoir Storage



The financial burden of attaining water storage rests with the user



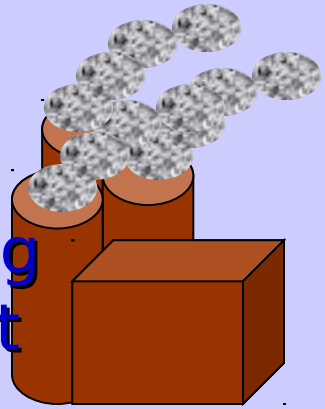
ELIGIBLE USERS?



Brown County Water District: residential water needs

City of Springfield: watering municipal golf course

BMF Power, Inc.: cooling new coal-burning plant



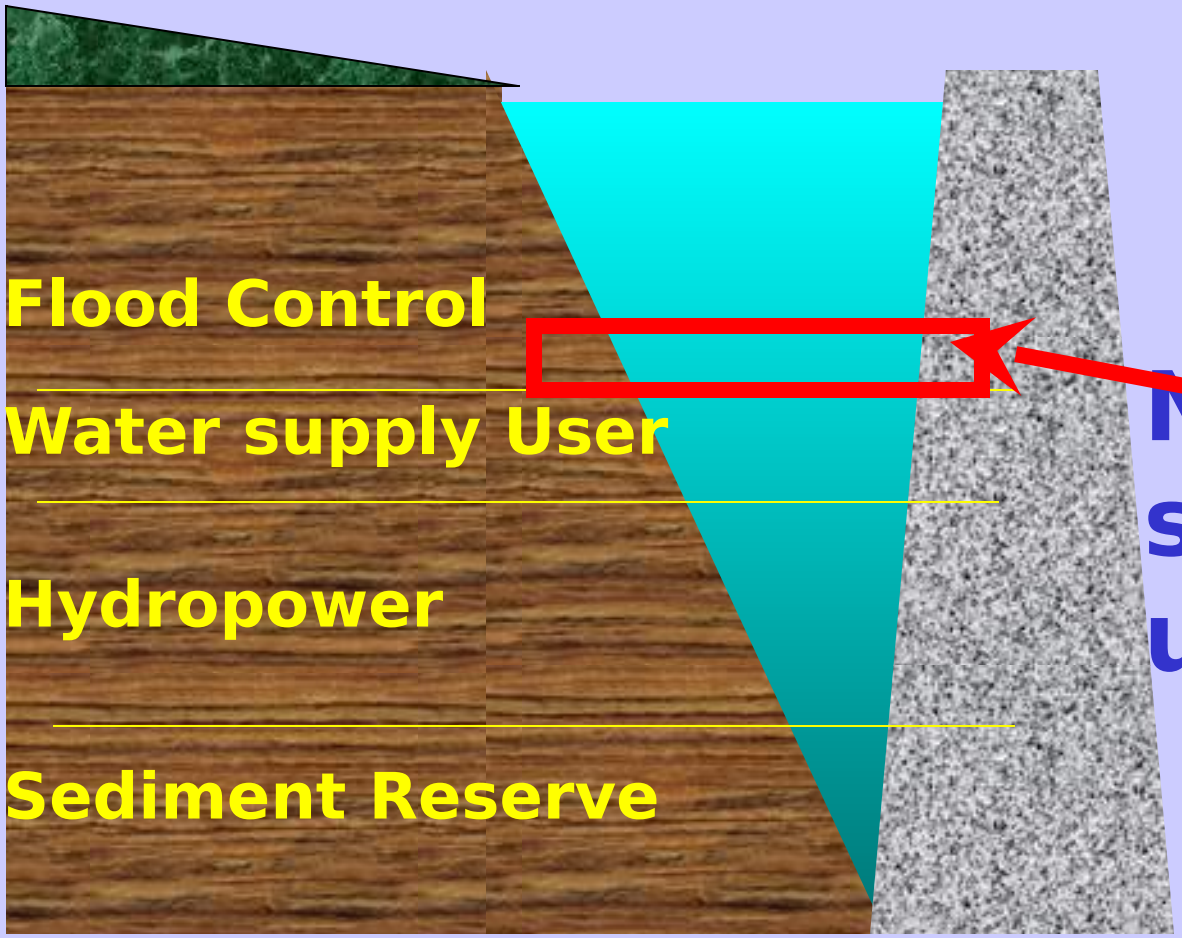
ELIGIBLE USERS?

Corps may sell either surplus water or storage to both public and private parties.

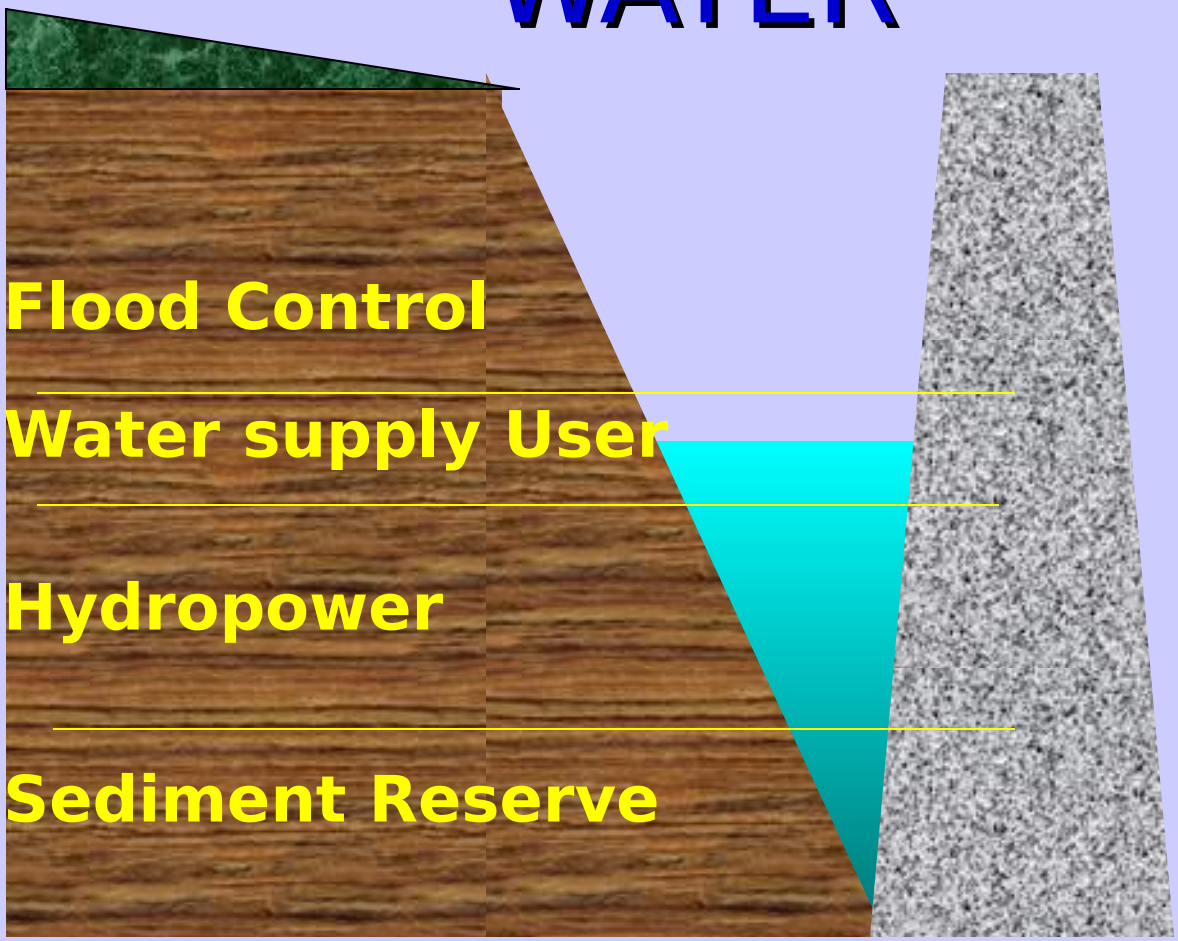
(Chief Counsel opinion, March 1998, citing legislative history behind PL 88-140.)

Policy Questions remain.

RIGHTS ACQUIRED BY NEW ‘58 ACT USER?



RIGHT TO STORAGE, NOT WATER



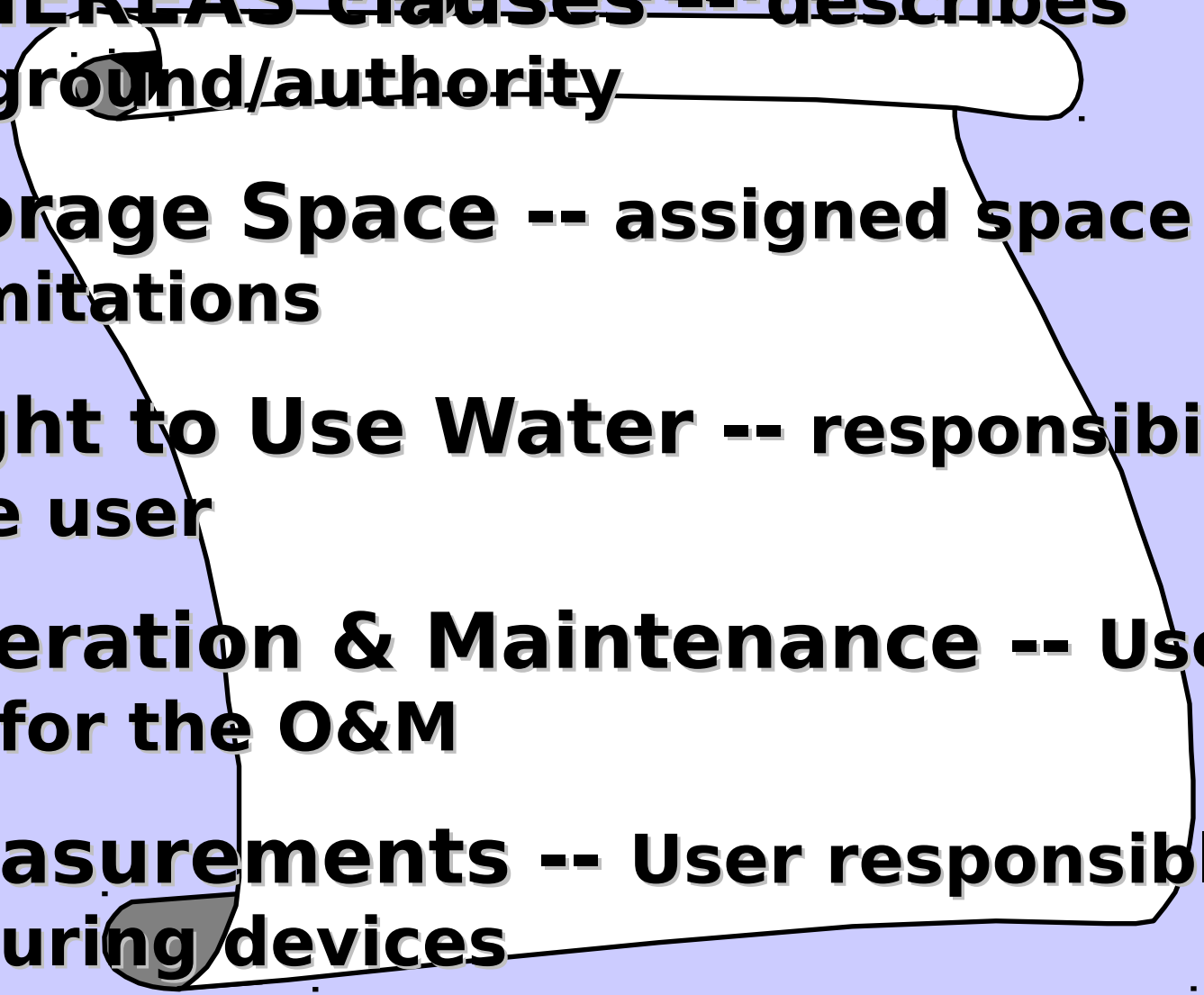
DURATION OF ‘58 RIGHTS?

PL 88-140: “The right thus acquired by any such local interest is hereby declared to be available to the local interest so long as the space designated for that purpose may be physically available, . . . , and not limited to the term of years which may be prescribed in any lease agreement or other agreement with the Government, but the enjoyment of such right will remain subject to performance of its obligations prescribed in such lease agreement or agreement executed in reference thereto . . .

PL 88-140 continued,

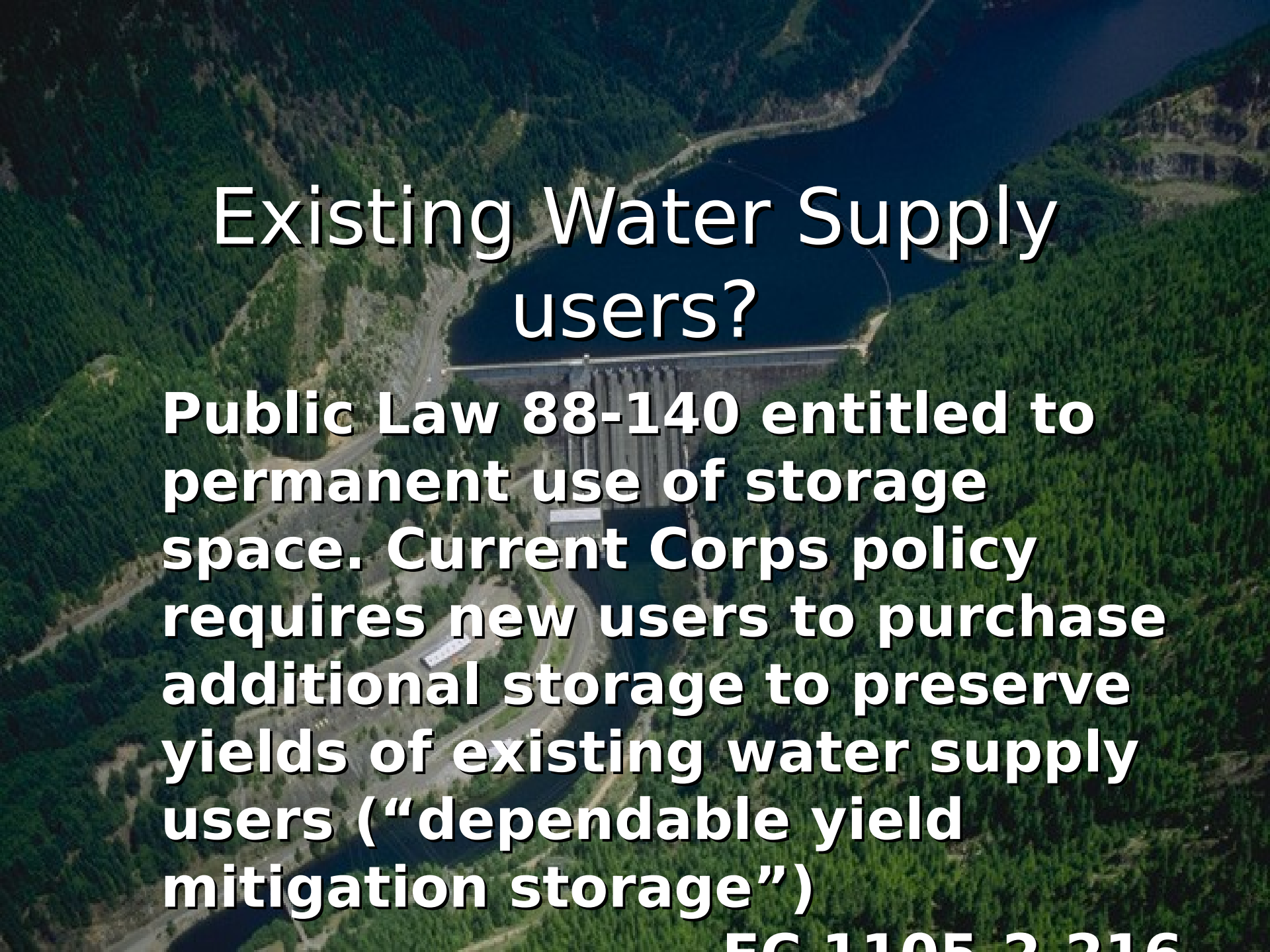
. . . Such obligations will include continued payment of annual operation and maintenance costs allocated to water supply. In addition, local interests shall bear the costs allocated to the water supply of any necessary reconstruction, rehabilitation, or replacement of project features which may be require to continue satisfactory operation of the project.”

Provisions of the Water Storage Agreement



- **WHEREAS clauses -- describes background/authority**
- **Storage Space -- assigned space and its limitations**
- **Right to Use Water -- responsibility of the user**
- **Operation & Maintenance -- User pays for the O&M**
- **Measurements -- User responsible for measuring devices**
- **Payments -- construction, annual**

Competing Interests...

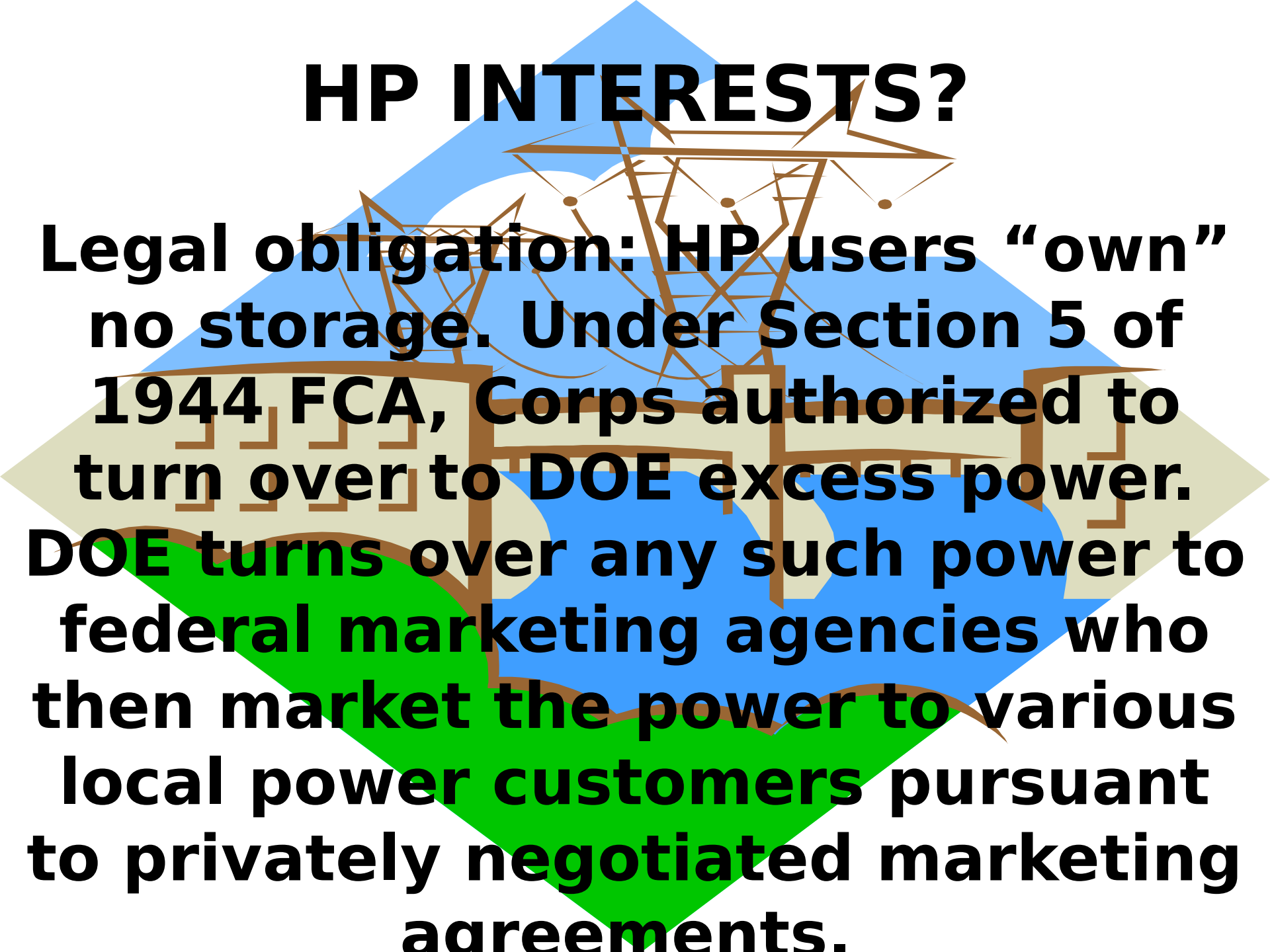


Existing Water Supply users?

Public Law 88-140 entitled to permanent use of storage space. Current Corps policy requires new users to purchase additional storage to preserve yields of existing water supply users (“dependable yield mitigation storage”)

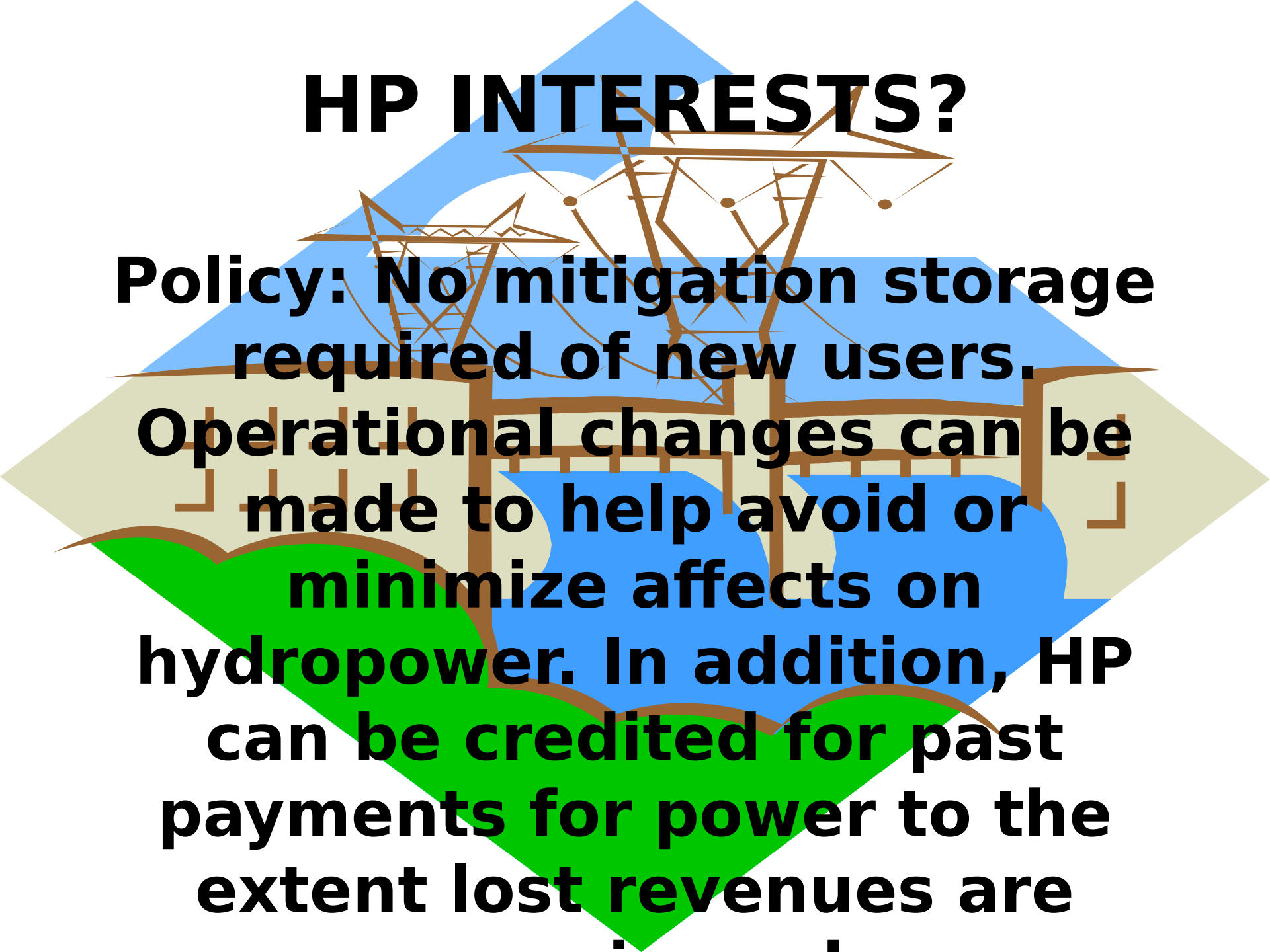
EC 1105-2-216

HP INTERESTS?



Legal obligation: HP users “own” no storage. Under Section 5 of 1944 FCA, Corps authorized to turn over to DOE excess power. DOE turns over any such power to federal marketing agencies who then market the power to various local power customers pursuant to privately negotiated marketing agreements.

HP INTERESTS?



Policy: No mitigation storage required of new users. Operational changes can be made to help avoid or minimize affects on hydropower. In addition, HP can be credited for past payments for power to the extent lost revenues are

ANY QUESTIONS??

Understand the rules + Understand the project =

National Benefit